

1
2
3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 LENA J. DANIEL,

8 Plaintiff,

9 v.

10 NANCY A. BERRYHILL, Acting
Commissioner of Social Security,¹

11 Defendant.
12

Case No. 2:14-cv-01728-JCM-PAL

**REPORT OF FINDINGS AND
RECOMMENDATION**

(Mot. to Remand – ECF No. 17)
(Cross-Mot. to Affirm – ECF No. 18)

13 This matter involves Plaintiff Lena J. Daniel’s appeal and request for judicial review of the
14 Acting Commissioner of Social Security, Defendant Nancy A. Berryhill’s final decision denying
15 her claim for disability insurance benefits under Title II of the Social Security Act (the “Act”), 42
16 U.S.C. §§ 401–33, and claim for supplemental security income under Title XVI of the Act, 42
17 U.S.C. §§ 1381–83.

18 **BACKGROUND**

19 Plaintiff Lena J. Daniel (“Daniel”) filed a Title II application for disability benefits on May
20 21, 2009, at the age of 45, and also protectively filed a Title XVI application for supplemental
21 security income on June 2, 2009. AR 381–83, 386–91.² These applications initially alleged a
22 disability onset date of December 22, 2004. In her applications, Daniel claimed she was unable to
23

24 ¹ Nancy A. Berryhill is now the Acting Commissioner of Social Security. Pursuant to the Federal Rules
25 of Civil Procedure and the Social Security Act, the court therefore substitutes Nancy A. Berryhill for
26 Carolyn W. Colvin as the defendant in this suit. *See* Fed. R. Civ. P. 25(d) (allowing the automatic
27 substitution of a successor to a public officer who is a party to an action but ceases to hold office while the
action is pending); 42 U.S.C. § 405(g) (“Any action instituted in accordance with this subsection shall
survive notwithstanding any change in the person occupying the office of Commissioner of Social Security
or any vacancy in such office.”).

28 ² AR refers to the Administrative Record (ECF No. 13), a certified copy of which was delivered to the
undersigned upon the Commissioner’s filing of her Answer.

1 work because of: (1) mood disorder; (2) bipolar disorder; and (3) depression. AR 406. Her work
2 history reports indicate she previously worked in clerical and administrative roles as an office
3 assistant and customer service representative. AR 412–19. The Social Security Administration
4 (the “Agency”) denied Daniel’s application initially and on reconsideration. AR 147–50.

5 An administrative law judge (“ALJ”) held a hearing on March 3, 2011, where Ms. Daniel
6 appeared with counsel. AR 123–46. During the hearing, counsel amended Daniel’s alleged onset
7 date to November 30, 2009, as the record contained no medical evidence prior to 2007. AR 125–
8 26. This amendment of the alleged onset date effectively precluded her Title II application because
9 her date last insured was September 30, 2009. *Id.*; *see also* AR 154. Daniel’s counsel asserted
10 that the theory of her case stemmed from her mental problems, not physical problems. AR 125–
11 26. The ALJ left the record open for 30 days to allow Ms. Daniel to supplement with additional
12 medical records and he also ordered a psychological examination with testing. AR 127, 145. The
13 ALJ issued a decision on June 3, 2011 (the “2011 decision”), finding that Daniel was not disabled
14 and she was capable of performing her past relevant work as an office assistant. AR 154–62. Ms.
15 Daniel requested review of the ALJ’s decision by the Appeals Council. AR 224.

16 The Appeals Council issued an order vacating the 2011 decision and remanding the case
17 to the ALJ for further consideration. AR 225–29. The Order stated that further consideration was
18 needed on whether Ms. Daniel could work as an office assistant because her residual functional
19 capacity limited her to brief encounters with the public and coworkers but the mental demands of
20 an office assistant require more than brief encounters. AR 227. Additionally, the Appeals Council
21 found that the mental limitations included in her RFC would significantly compromise the
22 potential occupational base for medium unskilled work. *Id.* However, the ALJ’s decision lacked
23 supporting evidence from a vocational expert. *Id.* Lastly, the Order noted that the 2011 decision
24 did not evaluate Ms. Daniel’s obesity as required by Agency regulations. *Id.* The Appeals counsel
25 instructed the ALJ to address these three deficiencies on remand. AR 228.

26 A brief second hearing was held on February 2, 2012. AR 90–101. Because Ms. Daniel
27 appeared at the hearing without counsel, the ALJ continued the matter to allow her to secure new
28 legal representation. *Id.*

1 The ALJ held a third hearing on July 12, 2012. AR 102–22. Ms. Daniel appeared at this
2 hearing with new counsel who amended her alleged onset date to September 29, 2009. AR 106.
3 This second amendment reinstated her Title II application. *Id.* The ALJ suspended the third
4 hearing to further develop the record. AR 119. The ALJ asked Daniel’s counsel for medical
5 records regarding Ms. Daniel’s newly alleged physical impairments and ordered a second
6 psychological exam, an orthopedic exam, and a vision exam. AR 113–14, 119–21.

7 A fourth hearing was held on February 26, 2013. The ALJ accepted testimony from Daniel,
8 AR 70–72, 81–88, and a vocational expert, AR 73–81. The ALJ held the record open for 30 days
9 to allow Ms. Daniel to submit all of her mental health records. AR 72, 88–89. In a decision dated
10 April 12, 2013, the ALJ found that she was not disabled. AR 17–42. Ms. Daniel again requested
11 review of the ALJ’s decision by the Appeals Council, but the ALJ’s decision became final when
12 review was denied on August 19, 2014. AR 1–6.

13 On October 17, 2014, she filed a Complaint (ECF No. 1) in federal court, seeking judicial
14 review of the Commissioner’s decision pursuant to 42 U.S.C. § 405(g). The Commissioner filed
15 her Answer (ECF No. 10) on March 9, 2015. Ms. Daniel filed a Motion to Remand (ECF No. 17),
16 and the Commissioner filed a Cross-Motion for Summary Judgment and Response (ECF Nos. 18,
17 19). The court has considered the Motion, Cross-Motion and Response, and Reply (ECF No. 20).

18 **DISCUSSION**

19 **I. APPLICABLE LAW**

20 **A. Judicial Review of Disability Determination**

21 Federal district courts review administrative decisions in social security benefits cases
22 under 42 U.S.C. § 405(g). *Akopyan v. Barnhart*, 296 F.3d 852, 854 (9th Cir. 2002). The statute
23 provides that after the Commissioner has held a hearing and rendered a final decision, a disability
24 claimant may seek review of that decision by filing a civil lawsuit in a federal district court in the
25 judicial district where the disability claimant lives. 42 U.S.C. § 405(g). The statute also provides
26 that the district court may enter, “upon the pleadings and transcripts of the record, a judgment
27 affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or
28 without remanding the cause for a rehearing.” *Id.*

1 The Commissioner’s findings of fact are conclusive if supported by substantial evidence.
2 42 U.S.C. § 405(g); *Ukolov v. Barnhart*, 420 F.3d 1002 (9th Cir. 2005). But the Commissioner’s
3 findings may be set aside if they are based on legal error or not supported by substantial evidence.
4 *Stout v. Comm’r Soc. Sec. Admin.*, 454 F.3d 1050, 1052 (9th Cir. 2006); *Thomas v. Barnhart*, 278
5 F.3d 947, 954 (9th Cir. 2002). The Ninth Circuit defines substantial evidence as “more than a
6 mere scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind
7 might accept as adequate to support a conclusion.” *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th
8 Cir. 1995); *see also Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th Cir. 2005). In determining
9 whether the Commissioner’s findings are supported by substantial evidence, a court “must
10 consider the entire record as a whole and may not affirm simply by isolating a ‘specific quantum
11 of supporting evidence’.” *Ghanim v. Colvin*, 763 F.3d 1154, 1160 (9th Cir. 2014) (quoting *Hill v.*
12 *Astrue*, 698 F.3d 1153, 1159 (9th Cir. 2012)).

13 Under the substantial evidence test, a court must uphold the Commissioner’s findings if
14 they are supported by inferences reasonably drawn from the record. *Batson v. Comm’r Soc. Sec.*
15 *Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2003). When the evidence will support more than one
16 rational interpretation, a court must defer to the Commissioner’s interpretation. *Burch v. Barnhart*,
17 400 F.3d 676, 679 (9th Cir. 2005). Consequently, the issue before a court is not whether the
18 Commissioner could reasonably have reached a different conclusion, but whether the final decision
19 is supported by substantial evidence.

20 It is incumbent upon an ALJ to make specific findings so that a court does not speculate as
21 to the basis of the findings when determining if the Commissioner’s decision is supported by
22 substantial evidence. *See Burrell v. Colvin*, 775 F.3d 1133, 1140 (9th Cir. 2014). Mere cursory
23 findings of fact without explicit statements about what portions of the evidence were accepted or
24 rejected are not sufficient. *Lewin v. Schweiker*, 654 F.2d 631, 634 (9th Cir. 1981). An ALJ’s
25 findings should be comprehensive, analytical, and include a statement explaining the “factual
26 foundations on which the ultimate factual conclusions are based.” *Id. See also Vincent v. Heckler*,
27 739 F.2d 1393, 1394–95 (9th Cir. 1984) (an ALJ need not discuss all the evidence in the record,
28 but must explain why significant probative evidence has been rejected).

B. Disability Evaluation Process

A claimant has the initial burden of proving disability. *Roberts v. Shalala*, 66 F.3d 179, 182 (9th Cir. 1995). To meet this burden, a claimant must demonstrate an “inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected . . . to last for a continuous period of not less than 12 months.” 42 U.S.C. § 423(d)(1)(A). A claimant must provide specific medical evidence to support his or her claim of disability. *Reddick v. Chater*, 157 F.3d 715, 721 (9th Cir. 1998). If a claimant establishes an inability to perform his or her prior work, the burden shifts to the Commissioner to show that the claimant can perform other substantial gainful work that exists in the national economy. *See Molina v. Astrue*, 674 F.3d 1104, 1110 (9th Cir. 2012) (noting that a claimant bears the burden of proof until the final step in the evaluation process).

II. THE ALJ’S DECISION

An ALJ follows a five-step sequential evaluation process in determining whether a claimant is disabled. 20 C.F.R. § 416.920; *Bowen v. Yuckert*, 482 U.S. 137, 140 (1987). If at any step an ALJ makes a finding of disability or non-disability, no further evaluation is required. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4); *Barnhart v. Thomas*, 540 U.S. 20, 24 (2003).

Here, the ALJ followed the five-step sequential evaluation process and issued an unfavorable decision on April 12, 2013 (the “Decision”). AR 20–34. Ms. Daniel does not challenge the ALJ’s findings at any particular step, but asserts that the ALJ failed to articulate reasons supported by substantial evidence for rejecting the opinion of a psychological examining physician. The parties stipulate that the ALJ fairly and accurately summarized the evidence and testimony of record in the Decision, except as specifically addressed in their arguments.

A. Step One

The first step of the disability evaluation requires an ALJ to determine whether the claimant is currently engaging in substantial gainful activity. 20 C.F.R. §§ 404.1520(b), 416.920(b). Substantial gainful activity is defined as work activity that is both substantial and gainful; it involves doing significant physical or mental activities, usually for pay or profit. 20 C.F.R. §§ 404.1572(a)–(b), 416.972(a)–(b). If the claimant is currently engaging in substantial gainful

1 activity, then a finding of not disabled is made. If the claimant is not engaging in substantial
2 gainful activity, then the analysis proceeds to the second step.

3 At step one in the Decision, the ALJ found that Ms. Daniel had not engaged in substantial
4 gainful activity since September 29, 2009, the amended alleged onset date. AR 22. Given her
5 lack of substantial gainful activity, the ALJ's analysis proceeded to the second step.

6 **B. Step Two**

7 The second step of the disability evaluation addresses whether a claimant has a medically-
8 determinable impairment that is severe or a combination of impairments that significantly limits
9 him or her from performing basic work activities. 20 C.F.R. §§ 404.1520(c), 416.920(c). An
10 impairment or combination of impairments is not severe when medical and other evidence
11 establish only a slight abnormality or a combination of slight abnormalities that would have no
12 more than a minimal effect on the claimant's ability to work. 20 C.F.R. §§ 404.1521, 416.921;
13 Social Security Ruling ("SSRs") 85-28, 1985 WL 56856 (Jan. 1, 1985), SSR 96-3p, 61 Fed. Reg.
14 34468 (July 2, 1996); SSR 96-4p, 61 Fed. Reg. 34488 (July 2, 1996).³ If a claimant does not have
15 a severe medically-determinable impairment or combination of impairments, then an ALJ will
16 make a finding that a claimant is not disabled. If a claimant has a severe medically-determinable
17 impairment or combination of impairments, then an ALJ's analysis proceeds to the third step.

18 At step two in the Decision, the ALJ found that Ms. Daniel had the following severe
19 impairments: (i) panic disorder (with agoraphobia features), (ii) bipolar disorder not otherwise
20 specified (with psychotic features), and (iii) chronic right knee pain from osteoarthritic changes
21 and a tear of the medial meniscus, and (iv) obesity. AR 22. In making his findings at step two,
22 the ALJ specifically considered all of her medically determinable impairments, including the non-
23 severe impairment of right ankle pain status post right ankle surgery with evidence of old trauma
24 to the lateral malleolus. AR 23. Because it did not more than minimally limit her ability to perform
25 basic work activities, the ALJ determined that the right ankle pain was a non-severe impairment.

26 ³ SSRs are the Agency's official interpretations of the Act and its regulations. *See Bray v. Comm'r Soc.*
27 *Sec. Admin.*, 554 F.3d 1219, 1224 (9th Cir. 2009); *see also* 20 C.F.R. § 402.35(b)(1). SSRs are entitled to
28 some deference as long as they are consistent with the Act and Agency regulations. *See Bray*, 554 F. 3d at
1223. "SSRs do not carry the 'force of law,' but they are binding on ALJs nonetheless." *Id.* at 1224.

1 AR 23. The ALJ considered the combined effect of all of her impairments on her ability to
2 function, including her obesity, to evaluate her RFC. *Id.* Because Ms. Daniel had four severe
3 medically-determinable impairments, the ALJ's analysis proceeded to the third step.

4 C. Step Three

5 Step three of the disability evaluation requires an ALJ to determine whether a claimant's
6 impairments or combination of impairments meet or medically equal the criteria of an impairment
7 listed in 20 C.F.R. Part 404, Subpart P, Appendix 1, which is commonly referred to as the
8 "Listings." 20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.826. If
9 a claimant's impairment or combination of impairments meet or equal the criteria of the Listings
10 and meet the duration requirement, 20 C.F.R. §§ 404.1509, 416.909, then an ALJ makes a finding
11 of disability. 20 C.F.R. §§ 404.1520(h), 416.920(h). If a claimant's impairment or combination
12 of impairments does not meet or equal the criteria of the Listings or meet the duration requirement,
13 then the analysis proceeds to the next step.

14 When the Agency evaluates the severity of mental impairments, 20 C.F.R. § 404.1520a
15 requires the use of a "special technique" to evaluate four broad functional areas known as the
16 "Paragraph B Criteria" in Listing 12.00C of the Listing of Impairments set forth at 20 C.F.R., Part
17 404, Subpart P, Appendix 1. *Id.*; *see also* 20 C.F.R. § 1520a (explaining the psychiatric review
18 technique); SSR 96-8p, 61 Fed. Reg. 34474 (July 2, 1996) (noting that application of the technique
19 is documented on a Psychiatric Review Technique Form). Paragraph B criteria require a claimant
20 to show that he or she experienced marked limitations in mental function. 20 C.F.R. Pt. 404,
21 Subpt. P, App. 1, § 12.00. To satisfy Paragraph B criteria, mental impairments must result in at
22 least two of the following: (i) marked restriction in activities of daily living; (ii) marked difficulties
23 in maintaining social functioning; (iii) marked difficulties in maintaining concentration,
24 persistence, or pace; or (iv) repeated episodes of decompensation, each of extended duration. *See,*
25 *e.g., id.* § 12.04(B). A "marked" limitation means "more than moderate but less than extreme."
26 *Id.* § 12.00(C). Repeated episodes of decompensation with extended duration means three
27 episodes within one year, or an average of once every four months, each lasting for at least two
28 weeks. *Id.* § 12.00(C)(4).

1 If the Paragraph B criteria are not met, a claimant may nevertheless be found disabled under
2 alternative Paragraph C criteria. *Id.* § 12.00(A). Under the regulations, Paragraph C criteria are
3 considered only if the Paragraph B criteria are not satisfied. *Id.* Paragraph C criteria require a
4 medically documented history of a chronic affective disorder of at least two years duration that
5 has caused more than a minimal limitation of ability to do basic work activities with symptoms or
6 signs currently attenuated by medication or psychosocial support, and one of the following:
7 (1) repeated episodes of decompensation each of extended duration; or (2) a residual disease
8 process that has resulted in such marginal adjustment that even a minimal increase in mental
9 demands or change in the environment would be predicted to cause the individual to
10 decompensate; or (3) current history of one or more years' inability to function outside a highly
11 supportive living arrangement, with an indication of continued need for such arrangement. *See*
12 §§ 12.02(C), 12.03(C), 12.04(C), 12.05(C), 12.06(C).

13 At step three, the ALJ determined that the evidence did not support a finding that Ms.
14 Daniel had the severity of symptoms required, either singly or in combination, to meet or equal
15 Listings 1.02 (major dysfunction of a joint), 12.03 (schizophrenic, paranoid and other psychotic
16 disorders), or 12.04 (affective disorders). AR 23. With regard to Listings 12.03 and 12.04, the
17 ALJ specifically evaluated the Paragraph B Criteria and concluded that the greater weight of the
18 evidence showed Daniel suffered: (i) no restrictions in activities of daily living; (ii) mild to
19 moderate difficulties in social functioning; (iii) moderate limitations in concentration, persistence,
20 or pace; and (iv) no episodes of decompensation that have been of extended duration. AR 24; *see*
21 *also* AR 524–37 (Psychiatric Review Technique Form). The ALJ also considered Paragraph C
22 criteria for Listings 12.03 and 12.04; however, the record lacked evidence of Paragraph C criteria.
23 AR 24. The ALJ therefore concluded that she did not have an impairment or combination of
24 impairments that meet or medically equal one of the impairments described in the Listings. *Id.*
25 As such, the ALJ's analysis continued to her residual functional capacity ("RFC").

26 **D. Step Four – RFC**

27 The fourth step of the disability evaluation requires an ALJ to determine whether a claimant
28 has the RFC to perform her past relevant work. 20 C.F.R. §§ 404.1520(f), 416.920(f). To answer

1 this question, an ALJ must first determine a claimant's RFC. 20 C.F.R. §§ 404.1520(e),
2 416.920(e). RFC is a function-by-function assessment of a claimant's ability to do physical and
3 mental work-related activities on a sustained basis despite limitations from impairments. SSR 96-
4 8p, 61 Fed. Reg. 34474 (July 2, 1996). In making this finding, an ALJ must consider all the
5 relevant evidence such as symptoms and the extent to which they can be reasonably be accepted
6 as consistent with the objective medical evidence and other evidence. 20 C.F.R. §§ 404.1529,
7 416.929; SSR 96-4p, 61 Fed. Reg. 34488 (July 2, 1996); SSR 96-7p, 61 Fed. Reg. 34483 (July 2,
8 1996). To the extent that statements about the intensity, persistence, or functionally limiting
9 effects of pain or other symptoms are not substantiated by objective medical evidence, an ALJ
10 must make a finding on the credibility of a claimant's statements based on a consideration of the
11 entire case record. An ALJ must also consider opinion evidence in accordance with the
12 requirements of 20 C.F.R. §§ 404.1527 and 416.927 as well as SSR 96-2p, 61 Fed. Reg. 34489
13 (July 2, 1996); SSR 96-5p, 61 Fed. Reg. 34471 (July 2, 1996); and SSR 06-3p, 71 Fed. Reg. 45593
14 (Aug. 9, 2006).

15 After considering the entire record, the ALJ concluded that Ms. Daniel had the RFC to
16 perform "less than medium work" as defined in 20 C.F.R. §§ 404.1567(c) and 416.967(c):

17 She could lift/carry fifty pounds occasionally and twenty-five pounds frequently,
18 could sit for six hours in an 8-hour workday, with customary breaks, stand/walk
19 about six hours in an 8-hour workday, frequently engage in postural activities,
20 except can only occasionally stoop, crawl and crouch, with no crawling, or climbing
of ladders. She could not work around unprotected heights. She was limited to
simple work activity, defined as work with an SVP of 1 or 2, and restricted to only
occasional interaction with co-workers and the public.

21 AR 25. In making this finding, the ALJ "considered all symptoms and the extent to which these
22 symptoms can reasonably be accepted as consistent with the objective medical evidence and the
23 other evidence." *Id.* He also considered opinion evidence. Although the ALJ found that Daniel's
24 medically determinable impairments could reasonably be expected to cause her alleged symptoms,
25 he determined that her statements concerning the intensity, persistence and limiting effects of those
26 symptoms were not credible to the extent they were inconsistent with the RFC assessment. *Id.*

27 Ms. Daniel's sole challenge on appeal alleges the ALJ failed to articulate reasons supported
28 by substantial evidence for rejecting the opinion of Teri F. Belmont, Ph.D., the examining

1 psychologist who performed a second consultative evaluation. She does not challenge the ALJ's
2 findings regarding the examining physicians who evaluated her physical conditions. Accordingly,
3 the following summary outlines only the portions of the Decision related to her mental
4 impairments.

5 1. Mental Health Symptoms and Treatment

6 Ms. Daniel reported heavy use of crystal methamphetamine and alcohol between 2000 and
7 2007. AR 689. In December 2004, she presented to the emergency room with depression and
8 suicidal ideation. AR 624. She denied any previous psychiatric history or hallucinations. AR 624.
9 A toxicology screening identified methamphetamine and amphetamine in her urine. AR 626. In
10 September 2007, Daniel hit her sister while high on drugs and her sister called the police. AR 567,
11 689. Ms. Daniel told the police that she was feeling suicidal and her sister decided not to press
12 charges. AR 565–67, 689. Daniel was released with a referral to Southern Nevada Adult Mental
13 Health (“SNAMH”) for treatment. *Id.*

14 SNAMH diagnosed Daniel with panic attacks, anxiety, depression, and bipolar disorder.
15 AR 25, 689. Her records from SNAMH note significant psychosocial stressors including housing
16 instability and a criminal history. AR 25 (citing AR 691). She reported a history of occasional
17 visual and auditory hallucinations. AR 500, 503, 559, 568, 693. In October 2007, a SNAMH
18 evaluation states that her treatment plan included an antidepressant and Depakote. AR 504–05.
19 In multiple treatment notes, Daniel reported that she was doing well, including on the date of
20 alleged onset, September 29, 2009. *See, e.g.*, AR 543–45. She was alert, cooperative, well
21 groomed, and displayed good attention and concentration. AR 508, 543, 556, 558–59, 726. She
22 stated in March 2010 that her depression “comes and goes.” AR 560. In April 2011, she reported
23 she had not used drugs since 2007; however, she admitted to a few slip ups using crystal meth.
24 AR 589.

25 Ms. Daniel consistently reported that she was medication compliant. *See, e.g.*, AR 542,
26 555, 559, 726. A November 2010 treatment notes states that she would continue with her
27 medications: Geodon, Wellbutrin, Depakote, and Coquetin. AR 556. In April 2011, she was taking
28 Bupropion for depression, Geodon for psychotic symptoms, Simvastatin for cholesterol, Depakote

1 which may be prescribed for bipolar disorder or panic disorder, Hydroxyzine for anxiety, Lovoxyl
2 for thyroid symptoms, and Benztropine for a sleep disorder. AR 566. Ms. Daniel stated that she
3 felt “pretty good” about her medications and she repeatedly denied any medication side effects.
4 AR 509, 513–17, 543, 545, 555, 557, 559, 591, 607, 620, 711, 726–27, 775–77, 779–80. She was
5 described on numerous occasions as “low risk” and “stable” despite some ongoing symptoms.
6 AR 586–87, 593, 605, 607, 613, 726, 781.

7 SNAMH gave Ms. Daniel a Global Assessment of Functioning (“GAF”) score of 55 during
8 her first evaluation in October 2007.⁴ AR 504. By August 2010, her GAF had improved to 70.
9 AR 558. In February 2011, treatment notes indicate her GAF was 80. AR 551. However, her
10 GAF was 60 in January 2012 and again in April 2013. AR 605, 779.

11 2. Psychological Exam with Dr. Wilson

12 On April 16, 2011, Daniel underwent a psychological consultative examination with
13 Warner Wilson, Ph.D. *See* AR 565–72. She described a long history of using alcohol and
14 methamphetamines and, at the age of 35, was hospitalized for attempting suicide. AR 566. Ms.
15 Daniel was using methamphetamine, both before and after this hospitalization, which lead the ALJ
16 to infer a substance-induced psychosis. AR 26 (citing AR 565–66). She admitted to worry,
17 anxiety, depression, mood swings and “to literally all particular symptoms of anxiety and
18 depression.” AR 567. She also admitted to suicidal ideation, paranoid ideation, and to auditory
19 and visual hallucinations. *Id.* Daniel described hearing voices when she was away from home
20 that told her to go back home. AR 568. She also reported frequent panic attacks, leaving Dr.
21 Wilson with the impression that they were her single worse problem. AR 566–67.

22 Dr. Wilson noted that Daniel was alert, friendly, and cooperative throughout the exam.
23 AR 568. She was oriented to time, place, person, and purpose. *Id.* During her mental status
24 examination, Ms. Daniel’s mood was appropriate, her attitude cooperative, and her replies were
25

26 ⁴ GAF is a scale reflecting the “psychological, social, and occupational functioning on a hypothetical
27 continuum of mental health-illness.” Diagnostic and Statistical Manual of Mental Disorders at 34 (4th ed.
28 2000) (“DSM IV”). A GAF score is a generalized description of the claimant’s level of psychological
symptoms. *See id.* at 32. However, GAF scores do not directly correlate to the severity assessments utilized
in Social Security disability determinations. *See* 65 Fed. Reg. 50746, 50764–65 (Aug. 21, 2000).

1 logical, coherent, and relevant. AR 567. During testing, she performed serial threes without error.
2 AR 568. Her delayed recall was intact, and she could recall “3/3” items following five and 15
3 minute delays. *Id.* Although she alleged audio and visual hallucinations, Dr. Wilson did not
4 observe any evidence of thought disorder. AR 570.

5 In his functional assessment, Dr. Wilson opined that Ms. Daniel’s cognitive functions may
6 have been better than her scores suggested. *Id.* She performed poorly on the Test of Memory
7 Malinger (“TOMM”) and other test scores were of doubtful validity. AR 569–70. The
8 psychologist assigned a GAF of 54, but clearly expressed his concerns about the validity of test
9 results and Daniel’s reliability. AR 570–71. Dr. Wilson opined that despite her low test scores
10 and their uncertain validity, Daniel could still perform simple tasks, typical of unskilled work:

11 Her ability to understand, remember, and carry out an extensive variety of complex
12 instructions is probably poor, her ability to handle detailed but uncomplicated
13 instructions may also be poor, but her ability to follow simple instructions is good.
14 Her own ratings were similar. It seems to me that she should be able to get along
with supervisors, coworkers, and the public, and this was her opinion also. She can
maintain concentration to carry out tasks as indicated.

15 AR 570. He assessed malingering, panic disorder with agoraphobia, and bipolar disorder not
16 otherwise specified with psychotic features. AR 570–71. Although he considered Ms. Daniel’s
17 prognosis poor, the psychologist stated that “even her low test scores would allow for performing
18 simple tasks.” AR 571.

19 The ALJ gave “little weight” to Dr. Wilson’s opinion and GAF score because he only
20 examined her one time and his findings were contradicted by Ms. Daniel’s mental health providers,
21 who had an ongoing relationship with her and had seen her many times. AR 27.

22 3. Psychological Exam with Dr. Belmont

23 On August 6, 2012, Ms. Daniel underwent a second psychological consultative
24 examination with Teri F. Belmont, Ph.D. AR 689–99. Daniel provided a consistent history of her
25 symptoms and mental health treatment. *See* AR 27–28. Her eye contact was appropriate and she
26 was friendly and cooperative. AR 693. She presented as mildly to moderately depressed, as
27 evidenced by frequent tearfulness, although the periods of tearfulness did not last long. *Id.* Dr.
28 Belmont noted that Daniel appeared extremely anxious and tense during most of the interview but

1 grew more relaxed during the mental status examination tasks. *Id.* She displayed some shakiness
2 related to her anxiety, but otherwise no significant verbal or nonverbal pain behaviors or abnormal
3 involuntary movements. AR 692. She did not appear to be responding to internal stimuli. AR 693.

4 Ms. Daniel reported panic attacks to Dr. Belmont but denied suicidal or homicidal feelings,
5 thoughts, or plans. *Id.* She did not describe or demonstrate excessive somatic preoccupation. *Id.*
6 She reported occasional command hallucinations, but she primarily experienced these symptoms
7 in 2006 before she stopped using drugs or began receiving mental health care. *Id.* She denied
8 visual or auditory hallucinations since using Geodon. *Id.* With regard to orientation and alertness,
9 she was fully attentive and had a normal level of alertness. *Id.* Dr. Belmont opined that Daniel
10 did not demonstrate symptoms of a diagnosable psychotic disorder. *Id.*

11 During the cognitive function exam, Ms. Daniel correctly recalled strings of four digits on
12 two occasions and five digits on one occasion (both forward and backward). AR 693. Her
13 performance was notably slow on the backwards testing as she frequently repeated the digits
14 forward to herself under breath in order to remember and subsequently reverse them. *Id.* She
15 correctly defined five of seven words, but adequately defined relationships between only one of
16 six word pairs. AR 694. She recalled three of three simple words immediately but only one after
17 a five-minute delay. *Id.* She adequately answered five of eight fund of information questions. *Id.*

18 Regarding her consistency and effort, Dr. Belmont opined that Daniel “may have difficulty
19 accurately describing to others her experience of emotional phenomenon as a result of her current
20 emotional distress and a possibly below-average level of intellectual functioning.” AR 695. For
21 these reasons, the psychologist was not convinced that Daniel met diagnostic criteria for bipolar
22 disorder, given that she primarily demonstrated symptoms during periods of substance abuse and
23 she received no mental health treatment until 2007, with the exception of her suicide attempt in
24 2004 while she was high on drugs. *Id.* Alternatively, Dr. Belmont found it plausible that Ms.
25 Daniel had “become a characterologically angry, depressed, and anxious individual as a result of
26 experiencing significant psychosocial stressors dating back to childhood. These factors, in
27 combination with her possibly somewhat below-average level of intellectual functioning, may
28 largely account for her history of poor coping and decision-making skills.” AR 695.

1 Dr. Belmont did not get a clinical impression of malingering, in contrast to Dr. Wilson. *Id.*
2 Ms. Daniel presented “consistently and believably” as “mildly to moderately depressed and
3 extremely anxious and tense during most of the interview.” *Id.* The psychologist doubted that
4 Daniel consciously attempted to feign cognitive impairment or exaggerate her psychiatric
5 symptoms during Dr. Wilson’s evaluation. *Id.* Rather, Dr. Belmont opined that Daniel’s test
6 performance “may well have represented an unsophisticated cry for help.” *Id.*

7 Functionally, Dr. Belmont opined that Ms. Daniel

8 should be able to understand, remember, and carry out simple one-and two-step
9 instructions on at least a part-time basis. However, as a result of possibly below-
10 average intellectual functioning in conjunction with her current experience of
11 significant depression and anxiety she may not be able to maintain the
concentration and attention necessary to do so, and she may also have difficulty
remembering, understanding, and carrying out a variety of detailed and complex
instructions on even a part-time basis.

12 AR 695. The psychologist questioned whether Daniel had the ability to “interact appropriately
13 with supervisors, co-workers, and the public on even a part-time basis” based on her significant
14 anxiety. *Id.* Although she was friendly and cooperative with Dr. Belmont, Daniel “appeared to
15 be extremely anxious, and accordingly reported having significant panic any time she leaves the
16 house.” *Id.* She demonstrated “lapses in attention and concentration during mental status testing
17 that were probably related to this anxiety.” *Id.* Dr. Belmont opined that Daniel’s emotional
18 symptoms did not appear to be adequately controlled on her medication regimen. *Id.*

19 Dr. Belmont diagnosed Daniel with panic disorder with agoraphobia (with features of
20 generalized anxiety disorder), mood disorder not otherwise specified (consider major depressive
21 disorder, unspecified), and amphetamine dependence in full sustained remission. AR 695. Her
22 prognosis was guarded given the “chronic and somewhat intractable nature” of Daniel’s
23 psychiatric symptoms, despite her medication regimen. *Id.* She was given a GAF of 55–60. *Id.*

24 Because Dr. Belmont’s opinion was not consistent with Ms. Daniel’s treatment notes and
25 other objective medical records, the ALJ gave it “little weight overall.” AR 29.

26 4. Review by State Agency Physicians

27 The ALJ also considered the findings of the state agency review physicians, Susan Kotler,
28 Ph.D., and Mark Richman, Ph.D. *See* AR 518–23 (Oct. 8, 2009 DDS Disability Worksheet),

1 AR 524–37 (Psychiatric Review Technique Form), AR 538–41 (Mental RFC Assessment),
2 AR (Feb. 3, 2010 DDS Disability Worksheet). After reviewing the medical evidence of record
3 through June 25, 2009, Dr. Kotler found that Daniel’s treatment notes described “significant and
4 gradual improvement” when she was compliant with her medications and abstinent from
5 substances. AR 536. The psychologist concluded that Ms. Daniel was capable of unskilled work;
6 she could sustain a regular workweek with casual, non-intensive, and/or limited contact with the
7 public and co-workers, and she was able to respond appropriately to gradual and infrequent
8 changes in work routine. AR 32 (citing AR 523). In February 2010, Dr. Richman reconsidered
9 her claim. AR 548. He found no evidence of any worsening of Ms. Daniel’s mental condition
10 and, therefore, affirmed Dr. Kotler’s prior assessment. *Id.* The ALJ “afforded weight” to these
11 review physicians’ opinions as the opinions of non-examining experts. AR 32.

12 5. Ms. Daniel’s Credibility

13 Insofar as Daniel alleged symptoms and functional limitations that would preclude her
14 from performing the activities described in her RFC, the ALJ found that her allegations were
15 “disproportionate to the objective findings of the medical record, inconsistent with the medical
16 opinion evidence, exaggerated, and not fully credible.” AR 30. Her overall mental treatment
17 records did not reflect debilitation or non-functional mental ability associated with disability,
18 especially for 12 or more months. *Id.*

19 Ms. Daniel had routine and continuous treatment with SNAMH for her mental health
20 complaints, and the treatment notes reflected her stability on her prescribed medication and overall
21 success with medication and treatment compliance. AR 31. There were no reported side effects
22 of her medications other than those addressed with a medication adjustment during her follow-ups
23 at SNAMH. *Id.* The ALJ noted that there was no medical basis for the original alleged onset date
24 of December 22, 2004, and Daniel reported that she was “doing well” on her amended onset date
25 of September 29, 2009. *Id.* (citing AR 543) (stating that she was alert, cooperative, well groomed,
26 and displayed good attention and concentration). Ms. Daniel did not have any surgeries,
27 hospitalizations, or other serious medical treatment since the alleged onset date. *Id.* Dr. Wilson
28 repeatedly found malingering throughout her first psychological examination. *Id.* (citing AR 565–

1 72). Notably, when SNAMH recommended in April 2012 that she participate in counseling,
2 Daniel stated that she could not go to counseling because she was babysitting her four-year-old
3 granddaughter. AR 31 (citing AR 711). The ALJ found that she did not submit records from a
4 single doctor that substantiated her allegations of disability from her mental or physical conditions,
5 and he stressed that there was no medical opinion in the record that contained a more restrictive
6 RFC. AR 30–31.

7 Several discrepancies in Ms. Daniel’s SNAMH treatment notes further detracted from her
8 credibility. AR 31. She reported difficulty getting a job due to her criminal record for battery and
9 child support issues. AR 31, 517. An October 2010 treatment note documented Plaintiff’s request
10 for a report of mental illness to give the district attorney because she owed back child support.
11 AR 557. The ALJ described this as a secondary gain issue since a disability finding would
12 “obviously help with her child support problems.” AR 26. The ALJ also noted that Daniel had a
13 poor work and earnings record since 2001, which showed a pattern that correlated with her history
14 of substance abuse. AR 26, 31. Her driver’s license was once suspended for “traffic violations”
15 not due to any medical limitations. AR 32. She reported that she was looking for work in May
16 2010. *Id.* (citing AR 583).⁵ In August 2010, she said she felt much better and enjoyed babysitting
17 her grandchildren. AR 31, 558.⁶ An April 2012 treatment note revealed that she was *still*
18 babysitting, which indicated to the ALJ that “she had been babysitting for a couple of years during
19 her alleged period of disability.” AR 31 (citing AR 711). The ALJ found that this activity was
20 “grossly inconsistent with significant psychiatric disturbance, especially given the rigors of
21 watching such a young child.” *Id.* Thus, although Daniel had a history of psychological
22 complaints, the ALJ determined that her impairments did not appear to interfere with her ability
23 to perform all basic work activities. AR 30.

24 More telling than a chronicle of Daniel’s various ailments to the ALJ were her actual
25 activities, which he found inconsistent with her contention that she could not work. AR 31. She

26 ⁵ See also AR 511 (August 2008 treatment note stating that she was cleaning houses for friends on the
27 side); AR 566 (reporting to Dr. Wilson in April 2011 that she was living with a friend and keeping house
in return for room and board); AR 592 (August 2011 treatment note stating that she was “looking for jobs”).

28 ⁶ See also AR 601 (January 2012 treatment note reporting that Plaintiff babysitting two grandchildren).

1 reported that her only chore was to make her own bed. AR 31, 691. On a typical day, she alleged
2 that she did not do anything but lay in bed and watch television. AR 31 (citing AR 691). This
3 allegation significantly reduced her credibility regarding the impact of her alleged impairments on
4 her activities of daily living because a “person who just laid in bed all day watching television
5 could not provide childcare for a young child 2, 3 or 4 years of age.” AR 31–32.

6 The Decision states that all of these factors greatly detracted from any credibility that could
7 be afforded Daniel’s subjective complaints of symptoms and functional limitations. AR 32.
8 Although she alleged cognitive limitations, the ALJ found no objective evidence to substantiate
9 such limitations. AR 31. Additionally, there was nothing in the record to suggest she could not
10 handle simple unskilled instructions. AR 32. The totality of the evidence did not support Ms.
11 Daniel’s allegations that she could not handle the stress of work, and did not support the extremity
12 of her allegations. *Id.* Factoring in any physical limitations along with the objective record as
13 submitted, the ALJ gave her the maximum possible benefit for her subjective allegations. AR 31.
14 The ALJ determined that reducing her RFC to simple, unskilled work adequately addressed her
15 unsupported allegations of cognitive limitation. *Id.*

16 **E. Step Four – Ability to Perform PRW**

17 Once an ALJ has determined a claimant’s RFC as an initial consideration at step four, an
18 ALJ utilizes the RFC assessment to determine whether a claimant can perform her past relevant
19 work (“PRW”). 20 C.F.R. §§ 404.1520(f), 416.920(f). PRW means work a claimant performed
20 within the last 15 years, either as the claimant actually performed it or as it is generally performed
21 in the national economy. 20 C.F.R. § 404.1560(b). In addition, the work must have lasted long
22 enough for a claimant to learn the job and to perform it as substantial gainful activity. 20 C.F.R.
23 §§ 404.1560(b), 404.1565, 419.960(b), 416.965. If a claimant has the RFC to perform his or her
24 past work, then an ALJ makes a finding that a claimant is not disabled.

25 At step four in the Decision, the ALJ concluded that Ms. Daniel was unable to perform her
26 PRW as: (i) office manager (DOT 169.167-034),⁷ which is performed at a sedentary level of
27 exertion a specific vocational profile (“SVP”) of seven; (ii) clerical assistant (DOT 03.5820-054),

28 ⁷ The DOT refers to the Dictionary of Occupational Titles.

1 which is sedentary work with an SVP of seven; (iii) receptionist/clerk/bookkeeping (DOT 237-
2 367-038), which is sedentary work with an SVP of four, and (iii) customer service/accounting
3 clerk (DOT 216.482.010), which is sedentary work with an SVP of five. AR 32. All of her PRW
4 had more than occasional contact with the public and/or exceeded the RFC limiting her to unskilled
5 work with a SVP of one or two. As a result, the Decision continued to step five.

6 **F. Step Five**

7 Step five of the disability evaluation requires an ALJ to determine whether a claimant is
8 able to do any other work considering his RFC, age, education, and work experience. 20 C.F.R.
9 §§ 404.1520(g), 416.920(g). If he or she can do other work, then an ALJ makes a finding that a
10 claimant is not disabled. Although a claimant generally continues to have the burden of proving
11 disability at this step, a limited burden of going forward with the evidence shifts to the
12 Commissioner. The Commissioner is responsible for providing evidence that demonstrates that
13 other work exists in significant numbers in the national economy that the claimant can do. *Yuckert*,
14 482 U.S. at 141–42; *see also Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012) (citing 42 U.S.C.
15 § 423(d)(2)(A)).

16 The Medical-Vocational Guidelines, 20 C.F.R. Part 404, Subpart P, Appendix 2, are
17 commonly known as the “Grids,” and specific sections are referred to as a Medical-Vocational
18 rule. The Grids aid the ALJ in the analysis at step five for cases that cannot be evaluated on
19 medical considerations alone. The Grids consist of three tables that each represent a different
20 physical exertional level: sedentary, light, and medium work. *Id.* Each table also presents the
21 vocational factors Congress has identified as important: age, education, and work experience. If a
22 claimant can perform all or substantially all of the exertional demands at a given exertional level,
23 the Grids direct a conclusion of either “disabled” or “not disabled” depending upon the claimant’s
24 specific vocational profile. SSR 83-11, 1983 WL 31252 (Jan. 1, 1983). When a claimant cannot
25 perform substantially all of the exertional demands of work at a given level of exertion and/or has
26 non-exertional limitations, the Grids are used as a framework for decision-making, unless there is
27 a particular rule that directs a conclusion of “disabled” without considering the additional
28 exertional and/or non-exertional limitations. *See* SSR 83-12, 1983 WL 31253 (Jan. 1, 1983); SSR

1 83-14, 1983 WL 31254 (Jan. 1, 1983). If the claimant has solely non-exertional limitations,
2 Medical-Vocational Rule 204.00 provides a framework for decision-making. SSR 85-15, 1985
3 WL 56857 (Jan. 1, 1983).

4 At step five in the Decision, the ALJ determined that Ms. Daniel could perform jobs that
5 exist in significant numbers in the national economy, considering her age, education, work
6 experience, and RFC, in conjunction with the Grids. AR 32–33. On the alleged date of disability,
7 Daniel was 45 years old, which categorized her as a younger individual age 18–49. AR 32. She
8 has at least a high school education and is able to communicate in English. *Id.* The ALJ found
9 that transferability of her job skills was not was not material to the determination of disability,
10 because using the Grids as a framework supported a finding that she was not disabled, whether or
11 not she had transferable job skills. *Id.*

12 The ALJ found that Ms. Daniel’s ability to perform all or substantially all of the
13 requirements of medium level of work had been impeded by additional limitations. AR 33. To
14 determine the extent to which her limitations eroded the unskilled medium occupational base, the
15 ALJ asked the vocational expert, Jack Dymond, a hypothetical question regarding whether jobs
16 exist in the national economy for an individual with Daniel’s age, education, work experience, and
17 RFC. AR 33, 73–81. Mr. Dymond testified that the individual would be able to perform the
18 requirements of three representative jobs categorized as “medium work” with an SVP of two: (1)
19 night cleaner (DOT 381.687-018), with 260 jobs in the Nevada economy and 18,542 jobs in the
20 national economy; (2) cleaner/wall washer (DOT 381.687-026), with 312 jobs in the Nevada
21 economy and 22,252 jobs in the national economy; and (3) hospital cleaner (DOT 323.687-010),
22 with 1,877 jobs in the Nevada economy and 70,519 jobs in the national economy. AR 33, 77. She
23 could also perform the requirements of two representative jobs categorized as “light work” with
24 an SVP of two: (1) officer helper (DOT 239-567-010), with 1,400 jobs in the Nevada economy,
25 and 83,000 jobs in the national economy; and (2) data entry clerk (DOT 239-567-010), with 16
26 jobs in the Nevada economy, and 5,683 jobs in the national economy. AR 33, 76. Lastly, she
27 could perform the requirements of two representative jobs categorized as “sedentary work” with
28 an SVP of two: (1) surveillance monitor (DOT 379.367-010), with 141 jobs in the Nevada

1 economy and 10,000 in the national economy; and (2) addresser (DOT 209-567-010), with 29 jobs
2 in the Nevada economy and 12,493 jobs in the national economy. AR 33, 75–76.

3 The ALJ found that these jobs represented significant numbers and Dymond’s testimony
4 was consistent with the DOT. AR 33–34. Considering Daniel’s age, education, work experience,
5 and RFC, the ALJ determined that she was capable of making a successful adjustment to other
6 jobs that exist in significant numbers in the national economy. *Id.* A finding of “not disabled”
7 was, therefore, appropriate under the framework of Medical-Vocational Rule 203.29. AR 34.

8 **III. THE PARTIES’ POSITIONS ON APPEAL**

9 **A. Ms. Daniel’s Position**

10 Daniel seeks reversal and remand of the Decision on the grounds that the ALJ failed to
11 give sufficient reasons supported by substantial evidence for rejecting the opinion of a
12 psychological examining physician. *See* Pl.’s Mot. (ECF No. 17). Specifically, Daniel argues the
13 ALJ erred by giving little weight to Dr. Belmont’s opinion that Daniel cannot maintain the
14 concentration and attention necessary to work. Dr. Belmont opined that Daniel can understand,
15 remember, and carry out simple one-and two-step instruction on at least a part-time basis. *Id.* at 9
16 (citing AR 695). However, based on Ms. Daniel’s possibly below-average intellectual functioning
17 in conjunction with her depression and anxiety, Dr. Belmont indicated a guarded prognosis. *Id.*

18 Daniel argues the ALJ erroneously found that Dr. Belmont’s opinion was not consistent
19 with Daniel’s treatment notes and other objective medical records. *Id.* at 10 (citing AR 29). For
20 example, an October 2010 record indicates that she had received mental health treatment since
21 December 2007 and she was diagnosed with bipolar disorder and depression. *Id.* (citing AR 550).
22 Records from March 2011 to February 2013 describe her as depressed, anxious, paranoid, tearful,
23 and in mild distress. *Id.* (citing AR 589, 601, 612–13, 727, 766). Thus, her medical records
24 support Dr. Belmont’s opinion. Ms. Daniel asserts the ALJ’s finding that Dr. Belmont’s opinion
25 was contrary to the medical evidence represents “a medical conclusion that the ALJ is not qualified
26 to make.” *Id.* at 12. The ALJ therefore failed to provide specific and legitimate reasons supported
27 by substantial evidence in the record for rejecting the opinion of Dr. Belmont.

28 Ms. Daniel also asserts that the ALJ could not give greater weight to Dr. Kotler’s opinion

1 as a non-examining physician because significant evidence did not support that opinion. The ALJ
2 gave the greatest weight to Dr. Kotler, a reviewing physician. *Id.* (citing AR 32, 524–41). She
3 contends the ALJ “permissibly considered but erroneously afforded great weight to Kotler’s
4 opinion.” Reply (ECF No. 20) at 4. Dr. Kotler found that insufficient evidence existed to
5 determine the severity of the mental impairments from the alleged onset of December 22, 2004,
6 until October 9, 2007. Mot. at 12 (citing AR 536). Daniel argues that Kotler’s opinion relates to
7 a time period before Daniel’s amended alleged onset date of September 30, 2009. Reply (ECF
8 No. 20) at 4 (citing AR 22, ¶ 1).

9 Ms. Daniel also argues that the vocational expert’s testimony supports her disability claim.
10 Both Drs. Belmont and Kotler opined that Daniel has moderate to marked limitations responding
11 appropriately to usual work situations and changes in a routine work setting. *Id.* at 4 (citing AR
12 697–98). This limitation would preclude her from performing any of the jobs identified because
13 Agency regulations indicate that a claimant must show the ability to respond appropriately to
14 changes in a routine work setting. *Id.* at 5 (citing POMS DI 25020.010 ¶B.3.m).⁸ For Ms. Daniel
15 to perform the unskilled work the vocational expert identified and the ALJ accepted, she must
16 show the ability to respond appropriately to changes in a routine work setting. However, the
17 vocational expert testified that someone with a marked restriction in the ability to respond
18 appropriately to usual work situations could not maintain employment under such conditions. *Id.*
19 (citing AR 80–81). Therefore, no evidence suggests that Daniel could engage in substantial gainful
20 activity with the limitations assessed by Dr. Belmont. Because the substantial medical record
21 supports her limitations, Ms. Daniel asserts that the court should credit Dr. Belmont’s opinion as
22 true and remand for an immediate award of benefits.

23
24
25 ⁸ The Program Operations Manual System (“POMS”) is the Agency’s internal guidelines. *Kennedy v.*
26 *Colvin*, 738 F.3d 1172, 1177 (9th Cir. 2013). The Ninth Circuit has held that “POMS may be ‘entitled to
27 respect’ under *Skidmore v. Swift & Co.*, 323 U.S. 134, 65 S. Ct. 161, 89 L.Ed. 124 (1944), to the extent it
28 provides a persuasive interpretation of an ambiguous regulation, but it ‘does not impose judicially
enforceable duties on either this court or the ALJ.’” *Kennedy*, 738 F.3d at 1177–78 (quoting *Carillo-Yeras*
v. Astrue, 671 F.3d 731, 735 (9th Cir. 2011)); see also *Lockwood v. Comm’r Soc. Sec. Admin.*, 616 F.3d
1068, 1073 (9th Cir. 2010)).

1 **B. The Commissioner's Position**

2 The Commissioner seeks affirmance of the ALJ's Decision asserting that the ALJ properly
3 assessed Dr. Belmont's opinion.⁹ Cross-Mot. & Resp. (ECF Nos. 18, 19). Daniel's sole argument
4 for reversing the Decision is her contention that the ALJ failed to provide specific and legitimate
5 reasons supported by substantial evidence for the weight afforded to Dr. Belmont's opinion.
6 However, Ms. Daniel's briefing selectively cites objective record evidence, failing to discuss a
7 majority of the objective findings in the record, and largely ignores the treatment notes the
8 Decision discussed in detail. For example, the treatment notes demonstrate that Daniel responded
9 well to antidepressant medications and she denied side effects from the medication. *Id.* at 4–5
10 (citing AR 25–27, 509, 517, 582, 605, 711, 727).

11 The Commissioner asserts that the ALJ permissibly gave the opinions of Drs. Wilson and
12 Belmont little weight because they were one-time examiners whose findings were contradicted by
13 the treatment notes of Daniel's mental health providers. *Id.* at 7. The record shows that, despite
14 feeling depressed, Daniel presented with good focus and concentration, reported she was doing
15 well, had a mostly stable mood and good eye contact, and denied all psychological symptoms. *Id.*
16 at 7–8 (citing 29, 706, 726, 766). Ms. Daniel erroneously argues that the ALJ's was not qualified
17 to make a finding that Dr. Belmont's opinion was contrary to the medical evidence. *Id.* at 8.
18 Agency regulations and Ninth Circuit case law provide that the ALJ has a clear responsibility to
19 consider all of the record evidence, without blindly relying on any individual medical source, and
20 resolve any conflicts between medical source opinions and other medical evidence of record. *Id.*
21 Thus, the ALJ did not substitute his own interpretation of the evidence for the opinion of medical
22 professionals. *Id.* Rather, he permissibly considered the totality of the record evidence. *Id.*

23 Additionally, the ALJ permissibly considered and afforded weight to Dr. Kotler's opinion.
24 Kotler opined that Daniel could sustain a regular workweek with casual and limited contact with
25 the public and co-workers, was capable of unskilled work, and was able to respond appropriately
26 to gradual and infrequent changes in her work routine. *Id.* at 9 (citing AR 32, 523, 540). Under

27 ⁹ The Commissioner notes that Plaintiff does not challenge the ALJ's findings regarding her physical
28 impairments when assessing her RFC.

1 agency regulations and Ninth Circuit case law, the opinion of a reviewing physician can trump that
2 of an examining physician and support the ALJ's RFC findings.

3 Furthermore, not a single medical opinion in the record contained a more restrictive RFC
4 than the ALJ found. *Id.* at 9 (citing AR 30–31). Thus, even if the ALJ had impermissibly rejected
5 Dr. Belmont's opinion, which he did not, Ms. Daniel fails to show how such an error harmed to
6 her. *Id.* Dr. Belmont did not opine that Daniel could not perform even simple work on a full-time
7 sustained basis. Rather, the psychologist found that Daniel "should be able to understand,
8 remember, and carry out simple one- and two-step instructions on at least a part-time basis", but
9 "may not be able to maintain the concentration and attention necessary to do so," due in part to
10 current psychosocial and environmental problems. *Id.* at 9–10 (citing AR 695). This opinion did
11 not prohibit all simple work on a full time sustained basis. Thus, even if Dr. Belmont's opinion
12 was credited as true, Daniel has failed to show how the opinion warrants a finding of total disability
13 and mandating remand and an award of benefits. Because she failed to establish a reason to disturb
14 the Decision, Ms. Daniel's request for reversal and/or remand should be denied.

15 **ANALYSIS AND FINDINGS**

16 Reviewing the record as a whole, weighing both the evidence that supports and the
17 evidence that detracts from the ALJ's conclusion, the court finds the ALJ's decision is supported
18 by substantial evidence, and the ALJ did not commit legal error. The sole issue on appeal is
19 whether the ALJ committed reversible error in failing to provide specific and legitimate reasons
20 for giving little weight to Dr. Belmont's opinion.

21 To the extent there were conflicting opinions and testimony regarding the degree of Ms.
22 Daniel's functional limitations, it was the ALJ's duty to resolve those conflicts. For highly fact-
23 intensive individualized determinations like a claimant's entitlement to disability benefits,
24 Congress has deferred to agency expertise and, for the sake of uniformity, has minimized the
25 opportunity for reviewing courts to substitute their discretion for that of the agency. *Treichler v.*
26 *Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1098 (9th Cir. 2014) (quoting *Consolo v. Fed. Mar.*
27 *Comm'n*, 383 U.S. 607, 621 (1966)). Consequently, it is the ALJ's duty "to determine credibility,
28 resolve conflicts in the testimony, and resolve ambiguities in the record." *Id.* (citing 42 U.S.C.

1 § 405(g) (directing that the Commissioner’s findings shall be conclusive as to any fact supported
2 by substantial evidence); *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995)).

3 In general, a treating physician’s opinion is entitled to more weight than an examining
4 physician’s, and an examining physician’s opinion is entitled to more weight than a reviewing
5 physician’s. *Lester v. Chater*, 81 F.3d, 821, 830 (9th Cir. 1995); 20 C.F.R. § 404.1527(d). Where
6 a treating physician’s opinion is not contradicted by another physician, it may be rejected only for
7 “clear and convincing” reasons, and where it is contradicted, it may not be rejected without
8 “specific and legitimate reasons” supported by substantial evidence in the record. *Lester*, 81 F.3d
9 at 830. However, an ALJ need not accept the opinion of any physician, including a treating
10 physician, if that opinion is brief, conclusory, and inadequately supported by clinical findings. *See*
11 *Chaudhry v. Astrue*, 688 F.3d 661, 671 (9th Cir. 2012); *Bray v. Comm’r Soc. Sec. Admin.*, 554
12 F.3d 1219, 1228 (9th Cir. 2009). Agency regulations and Ninth Circuit case law demonstrate that
13 an ALJ can rely on the opinion of a reviewing physician over an examining physician to support
14 the RFC findings. *See, e.g.*, SSR 96-6p, 61 Fed. Reg. 34466 (July 2, 1996); *Bray*, 554 F.3d at
15 1227–28 (finding that the ALJ reasonably discounted a treating physician’s opinion, in favor of
16 the state agency reviewing physician’s opinion, as it was based on the claimant’s subjective
17 characterizations of her symptoms). Additionally, an ALJ is not required to accept every element
18 of a medical source’s opinion in order to give that opinion weight. *Magallanes v. Bowen*, 881 F.2d
19 747, 753 (9th Cir. 1989) (quoting *Russell v. Bowen*, 856 F.2d 81, 83 (9th Cir. 1988)).

20 Here, the Decision provides the ALJ’s specific and legitimate reasons to the extent he
21 discounted Dr. Belmont’s August 2012 opinion. As the Commissioner points out, Dr. Belmont’s
22 opinion was equivocal. Dr. Belmont opined that Ms. Daniel “*should* be able to understand,
23 remember, and carry out simple one-and two-step instructions on at least a part-time basis,” “*may*
24 not be able to maintain the concentration and attention,” and “*may* also have difficulty
25 remembering, understanding, and carrying out a variety of detailed and complex instructions on
26 even a part-time basis.” AR 695 (emphasis added). The psychologist questioned whether Daniel
27 had the ability to “interact appropriately with supervisors, co-workers, and the public on even a
28 part-time basis” based on her significant anxiety. *Id.* Ms. Daniel “appeared to be extremely

1 anxious” during the August 2012 exam and reported “significant panic” any time she left the house.
2 *Id.* Dr. Belmont opined that Daniel’s prognosis was guarded given the “chronic and somewhat
3 intractable nature” of Daniel’s psychiatric symptoms, which did not appear to be adequately
4 controlled on her medication regimen. *Id.*

5 However, the ALJ pointed out that SNAMH’s October 2012 treatment note states that Ms.
6 Daniel denied all psychological symptoms, despite reporting that she was depressed. AR 29
7 (citing AR 726).¹⁰ The SNAMH doctor made no changes in her medications. AR 726. At her
8 February 2013 follow-up, she reported doing well and that her current medications were beneficial.
9 AR 29 (citing AR 766 (“ ‘I’m doing pretty good’.”)).¹¹ The ALJ noted, “Besides some personal
10 stressors/losses, she endorsed a mostly stable mood, and denied psychological symptoms.” *Id.*
11 These positive, post-exam reports were consistent with Daniel’s SNAMH records prior to August
12 2012. *See, e.g.*, AR 508–09, 513–17, 542–43, 555–59, 586–87, 591, 593, 605, 607, 613, 620, 711.
13 The ALJ provided specific and legitimate reasons why he afforded Dr. Belmont’s opinion little
14 weight. Additionally, the ALJ was qualified to make a finding that Dr. Belmont’s opinion was
15 contrary to the medical evidence. The ALJ’s has a duty to resolve conflicting testimony and
16 ambiguities in the record. *See Treichler*, 775 F.3d at 1098. By doing so in this case, the ALJ did
17 not substitute his own interpretation of the evidence for the opinions of medical professionals. As
18 the fact-finder, he permissibly considered the totality of the record evidence.

19 Ms. Daniel’s RFC is also supported by the opinions of the state agency review
20 psychologists, Drs. Kotler and Richman, and the first psychological consultative examiner, Dr.
21 Wilson. Daniel does not challenge the ALJ’s findings regarding the examining physicians who
22 evaluated her physical conditions. Dr. Kotler found that Daniel’s records showed “significant and

23 ¹⁰ Plaintiff’s October 2012 treatment note states, “She denied racing thoughts, reports good focus and
24 concentration.... Affect is appropriate to the situation. She describes overall mood “depressed” she denies
25 thoughts to harm self or others. Denies auditory/visual hallucinations. No delusional or bizarre thoughts
noted. Reports/denies anxiety and panic.” AR 726.

26 ¹¹ *See also* AR 779–81 (April 2013 treatment note: “Pt. reports that she is responding well to her current
27 regimens and denies side-effects. She admits to significant improvements with her mood and anxiety since
28 Buspar was increased on her last visit. She denies depressed mood and lack of interests.”); AR 777 (May
2013 treatment note: “Adverse effects: denies. ... Verbalized she is stable with her current medications,
appears to benefit from treatment.”); AR 775 (June 2013 treatment note: “She reports fairly doing well on
her current regimens and denies side-effects. She feels stable on her med.”).

1 gradual improvement” of her condition and, therefore, opined that Daniel was capable of unskilled
2 work; she could sustain a regular workweek with casual, non-intensive, and/or limited contact with
3 the public and co-workers, and she was able to respond appropriately to gradual and infrequent
4 changes in work routine. AR 523, 536. On reconsideration, Dr. Richman found no evidence of
5 any worsening of Ms. Daniel’s mental condition and, therefore, affirmed Dr. Kotler’s assessment.
6 AR 548. Dr. Wilson expressly found malingering and opined that Daniel could maintain
7 concentration to carry out simple tasks, typical of unskilled work. AR 570–71. The psychologist
8 further opined that her ability to follow simple instructions was good and she should be able to get
9 along with supervisors, coworkers, and the public. AR 570. It was the ALJ’s job to consider the
10 opinions of Drs. Kotler, Richman, and Wilson along with the record evidence, and resolve any
11 conflicts they presented with Dr. Belmont’s opinion.

12 If the record will support more than one rational interpretation, the court must uphold the
13 Commissioner’s interpretation. *See Burch*, 400 F.3d at 679. The ALJ’s findings in this case are
14 amply supported by the record and inferences reasonably drawn from the record. Reviewing the
15 record as a whole, the court therefore finds that the ALJ did not commit reversible error in his
16 assessment that Ms. Daniel could perform unskilled work and the ALJ properly relied upon
17 Medical Vocational Rule 203.29, which directed a finding that she was not disabled.

18 **CONCLUSION**

19 Judicial review of a decision to deny disability benefits is limited to determining whether
20 the decision is based on substantial evidence reviewing the administrative record as a whole. It is
21 the ALJ’s responsibility to make findings of fact, draw reasonable inferences from the record as a
22 whole, and resolve conflicts in the evidence and differences of opinion. Having reviewed the
23 Administrative Record as a whole, and weighing the evidence that supports and detracts from the
24 Commissioner’s conclusion, the court finds that the ALJ’s decision is supported by substantial
25 evidence under 42 U.S.C. § 405(g).

26 Accordingly,


27 ///

28 ///

1 **IT IS RECOMMENDED:**

- 2 1. Plaintiff Lena J. Daniel's Motion to Reverse/Remand (ECF No. 17) be DENIED.
- 3 2. The Commissioner's Cross-Motion to Affirm (ECF No. 18) be GRANTED.
- 4 3. The Clerk of Court be instructed to enter judgment accordingly and close this case.

5 Dated this 25th day of May, 2017.

6 

7 _____
8 PEGGY A. LEEN
9 UNITED STATES MAGISTRATE JUDGE